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July -

RCE

**REQUEST
FOR
CONTINUED EXAMINATION (RCE)
TRANSMITTAL**

Address to:
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/937,020
Filing Date	September 20, 2001
First Named Inventor	Stephen GOLD et al.
Art Unit	2876
Examiner Name	D. ST. CYR
Attorney Docket Number	1509-195

This is a Request for Continued Examination (RCE) under 37 C.F.R. §1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 C.F.R. §1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. Submission required under 37 C.F.R. §1.114

 - a. Previously submitted
 - i. Consider the amendment(s)/reply under 37 C.F.R. §1.116 previously filed on January 2, 2004.
(Any un-entered amendment(s) referred to above will be entered).
 - ii. Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
 - iii. Other: _____
 - b. Enclosed
 - i. Amendment/Reply
 - ii. Affidavit(s)/Declaration(s)
 - iii. Information Disclosure Statement (IDS)
 - iv. Other: _____

2. Miscellaneous

 - a. Suspension of action on the above-identified application is requested under 37 C.F.R. §1.103(c) for a period of _____ months. *(Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. §1.17(l) required)*
 - b. Other: _____

3. Fees

The RCE fee under 37 C.F.R. §1.17(e) is required by 37 C.F.R. §1.114 when the RCE is filed.

 - a. If necessary, the Director is hereby authorized to charge any deficiency in the following fees, or credit any overpayments, to Deposit Account No. 07-1337
 - i. RCE fee required under 37 C.F.R. § 1.17(e) - \$770.00
 - ii. Extension of time fee (37 C.F.R. §§1.136 and 1.17) - \$950.00
 - iii. Other:
 - b. Check No. _____ in the amount of \$_____ is enclosed.
 - c. Payment by Credit Card Form PTO-2038 enclosed.
WARNING: Information on this form may become public. Credit card information should not be included on this form.
Provide credit card information and authorization on PTO-2038.

01 EJ:1001 770.00 OP

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Allan M. Lowe	Registration No. (Attorney/Agent)	19,641
Signature		Date	March 16, 2004

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Box RCE, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)		Date	
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Adjustment date: 04/08/2004 SDIRETAA
03/17/2004 CHROUTEN 00000047 09937020
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MAIL STOP 16
PATENT
1509-195

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: GOLD et al.

Conf.: 3071

Serial No.: 09/937,020

Art Unit: 2876

Filed: September 20, 2001 Examiner: D. St. Cyr

For: INTELLIGENT MEDIA READER AND LABEL PRINTER

REQUEST FOR REFUND

Mail Stop 16
Director, U.S. Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

March 24, 2004

Sir:

Applicants hereby request a partial refund of the three-month extension fee paid in conjunction with the Request for Continued Examination (RCE) filed March 16, 2004, in connection with the above-identified application.

The facts are as follows:

A final Office Action was mailed October 1, 2003. A response to the final Office Action was filed January 2, 2004. The response amended claim 1 (to insert the word "the"), claim 8 (to insert the word "thereafter"), and claim 10 (to refer to the apparatus instead of the method in the preamble).

Upon receiving no Advisory Action, Applicants, through counsel, telephoned the Examiner on February 18 and February 23 regarding the status of the applicant, but the Examiner did not return the telephone calls.

On February 25, 2004, ~~APR 26 PM 2:20~~ Applicants, again through counsel, spoke with Supervisory Primary Examiner Michael Lee, who acknowledged receipt of the Amendment and attributed the delay in providing an Advisory Action to implementation of a "paperless office" system. SPE Lee said the USPTO would "pick up" the extension fees.

Since there is no statutory basis for SPE Lee's offer to "pick up" the extension fees, Applicants believed the Examiner would address the difficult position in which they had unfairly been placed by, for example, entering the Amendment filed January 2, 2004, and issuing a new non-final Office Action, or resetting the period for response.

Instead, on March 5, 2004, the Examiner mailed an Advisory Action, in which he refused to enter the Amendment. Specifically, the Examiner stated, "The amendment to claim 8 would require further consideration." The Advisory Action further indicated that the Amendment would not be entered for the purpose of appeal.

Solely to expedite prosecution, Applicants filed an RCE on March 8, 2004, with a three-month extension. Applicants believe they should at most only have to pay for a two-month extension and formally request a refund of \$530.

MPEP §714.13 states in part:

In the event that the proposed amendment does not place the case in better form for appeal, nor in condition for allowance, applicant should be promptly informed of this fact...The refusal to enter the

proposed amendment ~~should not be~~ arbitrary. The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified...

Any amendment timely filed after a final rejection should be immediately considered to determine whether it places the application in condition for allowance or in better form for appeal. An examiner is expected to turn in a response to an amendment after final rejection within 10 calendar days from the time the amendment is received by the examiner. A reply to an amendment after final rejection should be mailed within 30 days of the date the amendment is received by the Office.

At the very least, an Advisory Action issued within 30 days would have been received by Applicants more than two weeks before the deadline for taking action with a two-month extension. However, due to abnormal conditions at the USPTO (implementation of a "paperless office"), Applicants did not receive an Advisory Action until a three-month extension was required.

In addition, while Applicants recognize there is no right to entry of amendments after final rejection, the amendments to the claims in the present situation constituted corrections of obvious, non-substantive errors.

The Advisory Action did not state that the request for reconsideration was considered. The Advisory Action did not give any rationale as to why the response did not place the application in condition for allowance for any reason. As a result, Applicants are forced to ask: How long does it take to determine that something cannot be considered because it would

Serial No. 09/937,020

Docket No. 1509-195

SHAW AND LINTON
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require further consideration, especially when that something
is one word?

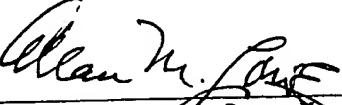
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While not specifically provided for, nothing in the rules prevents the Commissioner from granting this refund request. Clearly, the balance of equities favors granting Applicants' request for a refund of \$530, and such action is earnestly solicited.

Respectfully submitted,

LOWE HAUPTMAN GILMAN & BERNER, LLP

By:



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